UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,894	04/10/2001	Robert Barritz	P/1318-127	8555

2352	7590	02/24/2005

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EXAMINER
RHODE JR, ROBERT E

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	**Applicant(s)**
Office Action Summary	09/829,894	BARRITZ, ROBERT
	Examiner	**Art Unit**	
	Rob Rhode	3625	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _28 January 2005_.

2a)☐ This action is **FINAL**.　　　2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-13_ is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-13_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _10 April 2001_ is/are: a)☐ accepted or b)☒ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1-28-05

has been entered.

Drawings

The drawings filed on 04/10/2001 as indicated in a previous rejection are

acceptable subject to correction of the informalities indicated on the attached "Notice of

Draftperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this

application, correction is required in reply to the Office action. The correction will not be

held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite

for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention. In Claim 1, the word "criteria" is a relative word, which renders the claims indefinite. The word " criteria" is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree other than providing some examples, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. Moreover, the word "criteria" as recited is so broad that establishing the metes and bounds of the claim are almost impossible. For examination purposes the word "criteria" will be interpreted as a "criteria" by the user for a standard on which a judgment or decision is based. For example, a user constructing a website for selling shoes would not also decide to sell fire hoses too. In addition in claim 1, the word "semi-automatically " is a relative word, which renders the claims indefinite. The word " semi-automatically " is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes, the word "semi-automatically" will be treated as a generic word. Furthermore in claim 1, the word "substantially automatically " is a relative word, which renders the claims indefinite. The word " substantially automatically " is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes the word "substantially automatically" will be treated as a generic phrase.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can

be found in a prior Office action.

Claims 1 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Storefrontpro.com web pages captured via the WayBackMachine

(archieve.org) [hereafter referred to as "Storefront"] in view of Ross, Jr (US

6,629,135 B1).

Regarding claim 1 (currently amended), Storefront teaches a website constructor,

comprising:

a website organization subsystem that defines a look and feel of the website

constructed by the website constructor (see at least Pages 1 and 2);

a graphic design subsystem that creates at least one website layout and features setup

for the website constructed by the website constructor (see at least Pages 2 and 5); and

a website builder that builds the website based on the criteria and conditions that have

been setup by the foregoing subsystems (see at least Pages 1-7).

While it is implicit in Storefront that a merchant would establish a criteria for selecting

merchandise such as selecting shoe related items for a shoe store and not fire hoses

too, the reference does not specifically disclose or teach a selection criteria subsystem

that establishes a selection criteria for merchandise selection, a merchandise selection

subsystem in the website constructor that selects merchandise offered for sale on the

website constructed by the website constructor that matches the selection criteria at

least semi-automatically, the merchandise selection subsystem being based on

merchandise made available by a plurality of vendors; a merchandise information

downloading subsystem that downloads substantially automatically, from a plurality of

vendors of merchandise, merchandise information defining the merchandise offered for

sale on the website constructor by the website constructor that has been selected by

the merchandise selection subsystem.

On the other hand, Ross teaches a website constructor comprising a selection criteria

subsystem that establishes a selection criteria for merchandise selection (see at least

Abstract and Col 22, lines 16 - 18),

a merchandise selection subsystem in the website constructor that selects merchandise

offered for sale on the website constructed by the website constructor that matches the

selection criteria at least semi-automatically, the merchandise selection subsystem

being based on merchandise made available by a plurality of vendors (see at least Col

1, lines 31 – 31, Col 14, lines 39 – 41 and Col 24, lines 44 – 47);

a merchandise information downloading subsystem that downloads substantially

automatically, from a plurality of vendors of merchandise, merchandise information

defining the merchandise offered for sale on the website constructor by the website

constructor that has been selected by the merchandise selection subsystem (see at

least Col 14, lines 41 – 60).

It would have been obvious to one of ordinary skill in the art at the time of the

applicant's invention to have provided the constructor of Storefront with the constructor

of Ross to have enabled a constructor comprising a selection criteria subsystem that

establishes a selection criteria for merchandise selection, a website organization

subsystem that defines a look and feel of the website constructed by the website

constructor; a graphic design subsystem that creates at least one website layout and

features setup for the website constructed by the website constructor ; a merchandise

selection subsystem in the website constructor that selects merchandise offered for sale

on the website constructed by the website constructor that matches the selection criteria

at least semi-automatically, the merchandise selection subsystem being based on

merchandise made available by a plurality of vendors; a merchandise information

downloading subsystem that downloads substantially automatically, from a plurality of

vendors of merchandise, merchandise information defining the merchandise offered for

sale on the website constructor by the website constructor that has been selected by

the merchandise selection subsystem and a website builder that builds the website

based on the criteria and conditions that have been setup by the foregoing subsystems

– in order to enable a business to establish and conduct business at virtual site on the

internet. Storefront discloses a constructor for that defines look and feel and graphic

design subsystem for website layout (Pages 1 -7). In turn, Ross discloses a constructor

with a selection criteria subsystem that establishes a selection criteria for merchandise

selection, a merchandise selection subsystem in the website constructor that selects

merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection subsystem (see at least Abstract, Col 1, lines 31 – 31, Col 14, lines 39 – 41 and Col 24, lines 44 – 47). Therefore, one of ordinary skill in the art at the time of the applicant's invention would have been motivated to extend the constructor of Storefront with a constructor comprising a selection criteria subsystem that establishes a selection criteria for merchandise selection, a merchandise selection subsystem in the website constructor that selects merchandise offered for sale on the website constructed by the website constructor that matches the selection criteria at least semi-automatically, the merchandise selection subsystem being based on merchandise made available by a plurality of vendors; a merchandise information downloading subsystem that downloads substantially automatically, from a plurality of vendors of merchandise, merchandise information defining the merchandise offered for sale on the website constructor by the website constructor that has been selected by the merchandise selection subsystem. In this manner, the investment required by the website storefront owner can be reduced as well the time to establish the website, which will enabled a more rapid ability to obtain sales on the web and thereby begin recouping the investment.

Regarding claims 2 and 3, Storefront teaches wherein the system is operable semi-automatically (Pages 1, 2 and 8) and in which the website is optimized for a retail operation (Page 1).

Regarding claim 4, Storefront teaches the website constructor, in which merchandise information comprises at least two of the following merchandise parameters that are selected from the group consisting of: product code, UPC code, SKU code, product description, retail price, product style, product color, product size, product ordering information, product incentive program, product image, and product tags (Pages 1, 2 and 4).

Regarding claim 5, Ross teaches a website constructor, in which the merchandise information is provided in Extensible Markup Languages (XML) [Abstract]. Please note that Ross does not specifically disclose XML. However, Ross does disclose online catalogs and it was old and well known at the time of the applicant's invention documents such as catalogs from different entities would use XML to make data available.

Regarding claim 6, Ross teaches in which the selection criteria comprises at least two parameters selected from the parameter group consisting of: category; subcategory;

manufacturer; vendor; promotions; close-out; starting date and ending date of seasonal merchandise (Col 16, lines 61 - 64).

Regarding claim 7, Storefront teaches a website constructor, in which the website organization subsystem defines the look and feel of the website by reference to one or more organization parameters selected from the parameter group consisting of: category; manufacturer; promotions; close-out; product appearance; and tags representing the begin and end dates for the placement of merchandise on the website (Pages 4, 5, 8 and 9).

Regarding claim 8, Ross teaches in which the merchandise selection subsystem enables a user of the website constructor to control downloading of merchandise information in a manner which enables: acceptance or rejection of marketing or merchandise information based on the selection criteria; selection of purchase orders, pricing schedules, and delivery schedules; and specification of loading information (Col 16, lines 29 - 33).

Regarding claim 9, Ross teaches a website constructor in which the website builder enables periodical rebuilding of the website (Col 14, lines 21 - 35).

Regarding claim 10, Ross teaches a website constructor, which a website builder

enables rebuilding of the website based on the detection of changed condition (Col 14,

lines 21 – 25 and Figure 18).

Regarding claim 11, the recitation that "in which the changed condition comprises a

changed date", such recitation is given little patentable weight because it imparts no

structural or functional specificity which serves to patentably distinguish the instant

invention from the other "condition" already disclosed by Ross.

Regarding claims 12 and 13, the recitations that "in which the changed condition

comprises the changing of the merchandise information by a vendor" and "in which the

changed condition constitutes a manual intervention by a user of the website, such

recitations are given little patentable weight because it imparts no structural or

functional specificity which serves to patentably distinguish the instant invention from

the other "condition" already disclosed by Ross.

Response to Arguments

Applicant's arguments with respect to claims 1 - 13 have been considered but are
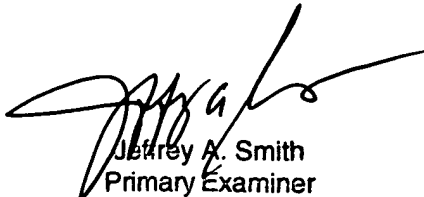
moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rhode whose telephone number is 703.305.8230. The examiner can normally be reached on M-F 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703.308.1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RER

Jeffrey A. Smith
Primary Examiner